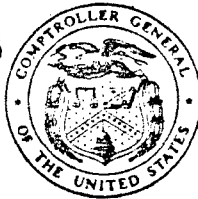


DECISION

17834 *From*
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

[Claim for Reimbursement of Subsistence Expenses]

FILE: B-199607

DATE: April 22, 1981

MATTER OF: Mrs. Betty J. Wiley

- DIGEST:
1. Non-Governmental civilian attendant who escorted an ill military member from his duty station in Spain to the hospital in the United States seeks reimbursement of actual expenses for food and lodging for time she remained in the area where the member was hospitalized. Since the attendant received reimbursement of actual expenses up to the maximum in the applicable regulation, 1 JTR, para. M6151-4, there is no basis for additional reimbursement.
 2. Amendment to 1 JTR, para. M6151-4 increasing maximum actual expense reimbursement for attendants traveling with ill military members in high rate geographical areas from a maximum of \$35 a day to the rate received by members on temporary duty cannot be given retroactive effect. Attendant's entitlements vest at the time of travel under the applicable regulation and a subsequent increase or decrease in entitlements is prospective only unless done to correct a manifest error.
 3. Upon ill military member's arrival at medical facility, the member's attendant traveling with him has ordinarily completed his or her assignment. The attendant is entitled to reimbursement of actual expenses for a reasonable time while awaiting report on patient and arranging for return travel but there is no authority to reimburse the former attendant for subsistence expenses incurred while he or she remains with member for personal reasons.

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Mrs. Betty J. Wiley [appeals the Claims Group's denial of her claim for full reimbursement of her subsistence costs incurred when she acted as an attendant for her ill husband, a member of the Navy.] For the following reason, we affirm the action of the Claims Group.

Because of the serious illness of her husband, Lieutenant John E. Wiley, USN, [Betty J. Wiley was authorized to act as a nonmedical attendant to accompany him from his duty station at Rota, Spain, to the National Naval Medical Center at Bethesda, Maryland.] Prior to her departure, she received travel orders which specified, among other things, that she would be required to itemize and document her actual expenses in order to be reimbursed and that a per diem was not authorized.] The travel orders contained no other explanatory material relative to her entitlement to be reimbursed her travel expenses.

In anticipation of the travel orders, Mrs. Wiley contacted a friend in the Washington, D.C. area to make a reservation for her at the Navy Lodge in Bethesda. Due to the Navy Lodge having no vacancies, the friend made a reservation for her at a nearby motel which, although more expensive, was the only accommodations then available in the vicinity of the National Naval Medical Center.

Mrs. Wiley and her husband departed from Rota, Spain, on May 9, 1978, and [arrived in Bethesda on May 10, 1978. She checked into the motel and remained there until May 23, 1978.] For this period Mrs. Wiley sought reimbursement of her actual expenses for lodging and meals which, on a daily basis, were between \$42 and \$60. The Navy reimbursed her for actual expenses but limited reimbursement to \$35 a day on the basis of this being the maximum daily amount allowable under the applicable regulation, Volume 1, Joint Travel Regulations, (1 JTR), paragraph M6151-4 (ch. 286, December 1, 1976).

When Mrs. Wiley objected to this limitation on the reimbursement, the Navy forwarded the claim, as doubtful, to our Claims Group. [The Navy questioned whether Mrs. Wiley could be reimbursed up to \$50 a day since at the time of her stay Bethesda, Maryland, had been deemed a high cost area for purposes of reimbursing members in a temporary duty status up to \$50 a day.] Additionally, the Navy pointed

out that paragraph M6151-4 was amended by change 323 on January 1, 1980, [to authorize an attendant to be reimbursed in high cost areas at the rate members received while performing temporary duty in these areas.] The Claims Group denied the claim on the basis that Mrs. Wiley's entitlement was governed by the regulation in effect during her stay in Bethesda. While that regulation provides for reimbursement to an attendant on an actual expense basis, it limited the reimbursement to the maximum of \$35 per day.)

[Mrs. Wiley asks us to authorize payment for the entire amount of her actual expenses on the basis that the emergency nature of the situation required her to stay near her husband; the motel she stayed in was the only available facility; and neither she nor her husband had any basis to know of any limitation on her reimbursement, especially since her travel orders were silent on this subject.]

As a general comment we would point out that any entitlement to reimbursement of travel expenses must be found in either a statute or regulation. Therefore, while we appreciate the seriousness of Mrs. Wiley's situation, it does not alter the rule that there must be a legal basis for any further reimbursement within the applicable regulation, [1 JTR, paragraph M6151-4.

From its inception on October 3, 1976, until amended by change 323 on January 1, 1980, paragraph M6151-4 authorized an attendant to "be reimbursed for the actual expenses of his meals and lodgings * * * at a rate not to exceed \$35 per day while traveling in the United States * * *." The regulation made no provision for a rate in excess of \$35 per day until change 323 on January 1, 1980, which made provision for an increase in the rate for high cost geographical areas.

Thus, [unless there be some basis for retroactively applying the amended regulation to this case, there is no authority to further reimburse the claimant.] Essentially, the rule in this area is that [when a regulation has been properly issued, any amendments to increase or decrease entitlements may only be given prospective effect except to correct manifest error.] 56 Comp. Gen. 1015, 1016-1017 (1977). Accordingly, [since the original regulation was properly issued, there is no basis to retroactively apply the amended regulation which was issued over a year after

B-199607

the travel.) See also B-193171, February 28, 1979. [Since there is no basis to authorize payment of the additional amounts Mrs. Wiley claims, the disallowance of her claim is sustained.]

This case also presents another related issue which was not specifically raised but requires attention. This issue concerns the duration for which an attendant receives travel and transportation expenses after arriving at the destination where the member is hospitalized. In this case, Mrs. Wiley was reimbursed for her time at Bethesda, Maryland, from the evening of May 10 to the forenoon of May 23, 1978.

Under 1 JTR, paragraph M6151-4 (ch. 286, December 1, 1976), [an attendant was authorized reimbursement of expenses only for the period necessary to complete his or her duties as an attendant.] The current version of 1 JTR, paragraph M6151-4 is substantively the same with certain procedural differences for approving the duration of the entitlement.

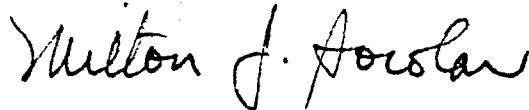
As paragraphs M6150-2 and M6151-1 of 1 JTR indicate, an attendant is an individual who aids a member not physically capable of traveling alone to a medical facility. Therefore, [ordinarily an attendant has completed his or her duties when the member arrives at the medical facility.] Accordingly, when the member arrives at the medical facility the individual acting as attendant is no longer in that status. We recognize that various factors, such as awaiting a preliminary examination of the patient or securing return travel, could keep the attendant in a travel status; however, [there would seem few circumstances, if any, which could serve as a basis for the attendant to remain in the status of an attendant for more than 2 or 3 days.]

[While obviously for personal reasons a civilian attendant, such as a member's spouse, may choose to remain with the member at the hospital, he or she cannot be considered an official attendant so as to be reimbursed for subsistence expenses during this time.] See generally B-174242, November 30, 1971, discussing this rule as it

B-199607

applies to escorts for ill civilian employees and which discussion is equally applicable to escorts for ill military members.

[While the length of time for which Mrs. Wiley's expenses were reimbursed appears excessive, since we do not know all the facts of her stay in Bethesda which occurred nearly 3 years ago, we will require no collection action in her case. However, care should be taken in the future to see that reimbursement of attendants' expenses is limited to the time the attendant can be reasonably considered as serving in that capacity.] To prevent misunderstandings, the attendant should be advised of these limitations on reimbursement prior to accepting the role of attendant.

A handwritten signature in cursive script, reading "Milton J. Fowler".

Acting Comptroller General
of the United States